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*Via ECF & Fax*

Hon. Esther Salas, U.S.D.J.  
United States Court for the District of New Jersey  
King Federal Building & Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

Hon. Cathy L. Waldor, U.S.M.J.  
United States Court for the District of New Jersey  
King Federal Building & Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: *BanxCorp v. Bankrate Inc.*, Civ. No. 07-3398 (ES)(CLW)**  
***BanxCorp v. LendingTree, LLC*, Civ. No. 10-2467 (ES)(CLW)**

Dear Judge Salas and Judge Waldor:

We write to advise the Court that factual discovery has been completed (except for certain pending document production by defendant Bankrate), and that plaintiff BanxCorp is ready to move for summary judgment on liability issues.

In the alternative, Bankrate's pending 12(b)(6) motion which appears to have been rendered moot in light of the recent depositions and additional discovery materials on record, should be converted into a motion for summary judgment. Accordingly, we ask the Court to set a summary judgment briefing schedule, and to extend the deadline for the filing of damages expert reports until after summary judgment disposition of liability issues.

We have written in the past to note that with respect to the rules governing Bankrate's failure to serve an Answer or Affirmative Defenses to the Fifth Amended Complaint, we rely on the Federal Circuit's authority in *General Mills, Inc. v. Kraft Foods Global, Inc.*, 495 F.3d 1378 (Fed.Cir.2007) (holding that the tolling provision of Rule 12(a)(4)(A) never applies to responses to amended pleadings). Based on the foregoing, Bankrate would be barred from filing an untimely Answer or Affirmative Defenses, and from serving any affirmative expert reports.

Respectfully submitted,



Mordechai I. Lipkis

cc: All Counsel (*via ECF*)